



Commonwealth  
of Massachusetts

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*Office of Campaign and Political Finance  
One Ashburton Place, Room 411  
Boston, MA 02108*

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### Advisory Opinion

April 11, 2002  
AO-02-12

Randall Block, Finance Director  
Reich for Governor Committee  
P.O. Box 381483  
Cambridge, MA 02238

Re: Treatment of proceeds received through sale of campaign items

Dear Mr. Block:

This letter is in response to your March 8, 2002 letter and a March 12 letter from Jerry Boren, the committee's comptroller, requesting an opinion regarding the treatment of proceeds received through the sale of campaign items such as bumper stickers and buttons.

You have stated that the Reich for Governor campaign has received numerous requests for campaign items, primarily buttons and bumper stickers. The committee does not have a mailing operation that can handle these requests so the committee has entered into discussions with an "on-line" store that could sell the items directly to individuals. For marketing purposes, the cost of an item could be a round number, e.g., buttons could cost \$2; bumper stickers could cost \$1. However, the cost of manufacturing, handling, and shipping the items, which would be the responsibility of the on-line store, would be somewhat less. The committee's role in the production and marketing of the materials would be limited to approving their design.

The on-line store has proposed to turn over to the campaign any funds received in excess of its costs (including profit). Because the amount of net revenue received by the campaign will be so small on a per person basis, you have proposed to declare this revenue as "non-donated income," much as you would declare interest earned on savings. You suggest that the revenue from the on-line store might also be considered a licensing fee for the sale of campaign materials.

You have also asked about the treatment of proceeds received if you sell campaign items at your headquarters or at various events around the state. You contend that the purpose of such activity would not be to raise funds for the campaign, but to insure that people do not simply take unlimited

quantities of “free” items. The sale price of the items would necessarily be a round number (e.g., \$1 or \$.50). However, the actual cost would be somewhat less. As with the on-line store, the amount of net revenue received by the campaign would be small on a per person basis, and you propose to treat the revenue as “non-donated income.”

You suggest that, either using an on-line store or otherwise, treating funds received in exchange for a campaign item such as a bumper sticker would require internal procedures and documentation that would be onerous and unworkable. You suggest that a contribution should be considered to occur “when a person receives something of value and *pays in excess of* fair market value for what she receives.” Since you intend to charge the fair market value for an item, you do not believe that the transaction should be seen as involving the receipt of a “contribution.”

In both situations, expenses incurred in connection with the distribution of the items would be reported in the same manner other expenses are reported.

#### QUESTION 1

May the committee use an on-line store, provided by an independent vendor, to distribute campaign items, as described above, *and receive any funds received in excess of the vendor’s costs* (including profit) as “non-donated income” that would not be considered “contributions” subject to the restrictions placed on contributions by the campaign finance law?

#### ANSWER

No. If the committee receives any funds from the transaction, the entire amount of the funds provided to the vendor by a person buying items would be considered a “contribution” to the candidate. The office has consistently advised that any funds received from persons supporting a candidate or political committee are considered contributions. There is no minimum threshold below which such funds can be considered “non-donated income,” even if the amount received is sufficient only to cover expenses. See AO-92-28 (where committee charges fifty cents for soft drinks at a community barbecue, the funds received are contributions) and AO-99-17 (stating that “all funds received to pay the expenses associated with an event are ‘contributions,’ even if there is no surplus after paying expenses.”)

If 10 persons each give the committee \$1 for a bumper sticker, and the vendor receives 75 cents of each dollar to cover its costs, each person has made a contribution of a dollar, and the committee is responsible for keeping records of the name and residential address of each contributor. The committee would also be responsible for reporting an expenditure to the vendor of \$7.50 (75 cents for each bumper sticker multiplied by 10).

Because all funds received would be contributions, the funds, including the amount that might ultimately be used to pay the vendor, must first be deposited into the committee’s depository account in the form received. See M.G.L. c. 55, § 19(b). The portion transmitted to the vendor would be an expenditure by the committee and any expenditure in an amount exceeding \$50 must be made using a specially formatted check drawn on the committee’s depository account. See M.G.L. c. 55, § 19(c). If the committee receives funds, it must report all receipts as contributions and must keep records reflecting the source of all contributions, regardless of amount. In addition, the committee must report all payments made in connection with the distribution of the items, including payments made to the vendor, as expenditures.

QUESTION 2

Would it make a difference if the vendor retains all proceeds received from the sale of the items?

ANSWER

Yes. If an individual purchases an item from an on-line store and the store does not provide any of the proceeds to the committee, the funds received by the on-line store would not be “contributions,” and the committee would not be receiving a contribution, would not have any funds to deposit in the committee’s depository account, and would avoid the disclosure and record keeping requirements required of contributions and expenditures under the campaign finance law. Under these circumstances, it would appear that the vendor’s interest is strictly profit-oriented and not undertaken for the purpose of influencing an election.

This office has not previously determined whether the arrangement described in Question 2 would result in the receipt of contributions by a candidate or political committee. The office has stated, however, that a party committee could work with an insurance company to provide contributors with a “membership benefit” of reduced automobile insurance, notwithstanding the receipt of funds by a vendor and an ongoing business relationship between the committee and the vendor. See AO-96-11. The opinion stated that the proposal complied with the law because, unlike the marketing proposal rejected in AO-93-27, the party committee *would not receive any funds from the corporation*. The fact that the party committee might “incidentally benefit” did not affect the conclusion.

Consistent with this reasoning, your proposal as described in Question 2 would not appear to involve the receipt of “contributions.”<sup>1</sup> Although persons giving the funds to the vendor may want to enhance the Reich candidacy, and the display of the items might enhance the Reich candidacy, the funds given are not “contributions” and the arrangement is consistent with the campaign finance law if this is a profit-making arms length commercial transaction and the committee would receive no funds. The persons giving the funds to the vendor must, however, be advised that the funds will not be transferred to the committee and that they are not making “contributions” when they provide the funds.<sup>2</sup>

Finally, section 8 of chapter 55 prohibits the receipt by candidate committees of contributions from business corporations. Therefore, the vendor, if it is incorporated, must offer the same arrangement to the committee that it would provide to any other candidate or political committee using the on-line store’s services. For example, if the vendor typically receives 75 cents of each dollar from political committees to cover its costs for each one dollar bumper sticker sold, it cannot offer the committee a special arrangement where it would only receive 60 cents for each one dollar bumper sticker sold.

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<sup>1</sup> Section 1 defines “contribution,” in relevant part, as “a contribution of money or anything of value to an individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate. . .” I note that persons may purchase bumper stickers or buttons for any number of reasons, e.g., a person may be a collector of political memorabilia. Of course, in most situations, it is reasonable to assume that the purchaser of Reich bumper stickers and buttons is interested in promoting Reich’s candidacy. This does not, however, negate the commercial nature of the activity and where the committee does not receive any part of the funds it is generally most appropriate to not treat such funds as “contributions.”

<sup>2</sup> The Federal Election Commission has taken a similar approach to such commercial activities. See FEC advisory opinion 1994-30.

QUESTION 3

Would the answer to Question 1 be different if instead of using an independent vendor, the committee sells the items and receives funds from purchasers?

ANSWER

No. The entire amount of the funds received by the committee from purchasers would be considered "contributions."

QUESTION 4

May the committee provide a link between the campaign website and the website of an independent vendor providing the on-line store to enable visitors to the campaign website to purchase merchandise directly from the vendor, if the committee has no role in handling funds or setting prices, and does not receive any funds in the transaction? You have stated that there would be a disclaimer near the link advising that "no part of your purchase price goes to the Robert Reich for Governor Campaign. This is not a campaign contribution."

ANSWER

Yes. The link with the described disclaimer would be consistent with the campaign finance law and receipt of funds by the vendor using this approach would not involve the receipt of contributions by the committee.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter.

Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

cc: Jerry Boren, Comptroller, Reich for Governor Committee  
MJS:gb